

NO. PD-0395-20

IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
6/23/2020
DEANA WILLIAMSON, CLERK

NICOLE PATRICE SELECTMAN
Appellant-Petitioner

v.

STATE OF TEXAS
Appellee-Respondent

The 144th Judicial District Court, Bexar County, Texas &

Fourth Court of Appeals, San Antonio, Texas;

Cause No(s).: [2015-CR-9689] & [04-18-00553-CR], respectively.

**MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S
PETITION FOR DISCRETIONARY REVIEW**

DEAN A. DIACHIN
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LEAD COUNSEL FOR APPELLANT.

IDENTITY OF PARTIES, COUNSEL, & TRIAL COURT

Pursuant to TEX. R. APP. P. 38.1(a) (West 2019):

The parties to this action are:

- (1). Appellant: NICOLE PATRICE SELECTMAN, T.D.C.J.#: 02205755; Hobby Unit; 742 FM 712; Marlin, TX 76661-4685.
- (2). Appellee: STATE OF TEXAS.

The trial attorneys are:

- (1). For appellant: MARK J. McKAY, TBN: 13688520, 405 N. St. Mary's Street, Suite 1030; San Antonio, TX 78211; & LYNETTE M. BOGGS-PEREZ, TBN: 24084486, 310 S. St. Mary's Street, Suite 1910; San Antonio, TX 78205
- (2). For the State: JOE A. MIMS, TBN: 24073633; & STEPHANIE FRANCO, TBN: 24093449; Bexar County District Attorney's Office, 101 W. Nueva St.; San Antonio, TX 78205.

The appellate attorneys are:

- (1). For appellant: DEAN A. DIACHIN, TBN: 00796464, Bexar County Assistant Public Defender, 101 W. Nueva St., Suite 370; San Antonio, TX 78205.
- (2). For the State: LARUA E. DURBIN, TBN: 24068556, Bexar County District Attorney's Office; 101 W. Nueva St., Suite 710; San Antonio, TX 78205.

The trial court is:

- (1). The HON. RAYMOND CRIS ANGELINI, sitting by designation, 144th District Court, Cadena Reeves Justice Center, 300 Dolorosa St., 2nd floor, San Antonio, TX 78205.

**TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS
OF TEXAS:**

COMES NOW, appellant, NICOLE P. SELECTMAN, who, by and through the undersigned counsel of record, and pursuant to TEX. R. APP. P. 10.5(b), does hereby respectfully move this Court to extend the time to file appellant's petition for discretionary review, and in support thereof would show this Honorable Court the following:

I. Procedural History.

Appellant was convicted of aggravated assault with a deadly weapon on June 14, 2018. Appellant was sentenced on June 15, 2018. Appellant timely filed both her briefs in the court of appeals by June 23, 2019. The court of appeals affirmed the trial court's judgment on March 25, 2020. Appellant timely filed a motion for *en banc* reconsideration on April 9, 2020, which was overruled on May 22, 2020.

II. Current Deadline for Filing P.D.R.

Here, given the last timely motion for *en banc* reconsideration was overruled on May 22, 2020, the deadline to file a P.D.R. is June 22, 2020. TEX. R. APP. P. 4.1(b); 68.2(a) (West 2019). That said, this Court "may extend the time to file a petition for discretionary review if [the] party files a motion complying with Rule 10.5(b) no later than 15 days after the last day for filing the petition." TEX. R. APP. P. 68.2(c)

(West 2019). As such, this motion to extend the time to file a P.D.R. is timely. TEX. R. APP. P. 4.1(b); 68.2(c) (West 2019).

III. Length of Extension Sought.

Appellant seeks an extension of thirty [30] days, until Wednesday, July 22, 2020, to file appellant's petition for discretionary review.

IV. Facts Relied on To Explain the Need for Extension.

The primary reason for delay in filing appellant's P.D.R. is counsel's concurrent briefing and other obligations in at least six [6] other cases, namely: *Reynaldo Polendo v. State*, 04-19-00647-CR, [motion for extension filed 05-18-20]; *Gerald Hodges v. State*, 04-19-00292-CR & 04-19-00293-CR [48.4 compliance letters filed 05-19-20]; *Steven Sumlin v. State*, 04-18-00972-CR, [certified *Wilson* letter mailed: 06-04-20]; *Jose Matamoros v. State*, 13-19-00505-CR, [amended brief filed: 06-08-20]; & *Joseph Alvarado v. State*, 13-20-00070-CR, [brief due: 06-29-20].

Also, per a Bexar County edict entered in mid-March 2020, counsel has been directed to work from home due to the COVID-19 disaster. Counsel has thus been without a full measure of the word processing, online calendar, and electronic research tools that are normally used to generate documents like the one due here.

Further, in light of this Court's recent ruling in *Ebikam v. State* — which shares substantially similar facts — pursuing a P.D.R. will be very important in this case.

See Ebikam v. State, PD-1199-18; 2020 WL 3067581, [Tex. Crim. App. June 10, 2020] (finding that, in order to get a self-defense instruction in an assault case, defendants need not admit exact manner and means alleged in the charging instrument).

IV. Prayer

WHEREFORE, PREMISES CONSIDERED, appellant respectfully prays that this Honorable Court grants an extension of thirty [30] days, to Wednesday July 22, 2020 to file appellant's petition for discretionary review.

Respectfully submitted,

MICHAEL L. YOUNG
Bexar County Chief Public Defender

BY:

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LEAD COUNSEL FOR APPELLANT.

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing notice has been delivered to the Bexar County District Attorney's Office, Appellate Section, at the Cadena-Reeves Justice Center, 300 Dolorosa Street, San Antonio, Texas on this 22th day of June 2020.

/s/ *Dean A. Diachin*

DEAN A. DIACHIN

Bexar County Assistant Public Defender.

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Dean Diachin on behalf of Dean Diachin
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Associated Case Party: State of Texas

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Laura Durbin		laura.durbin@bexar.org	6/22/2020 12:35:21 PM	SENT